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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:)	
PETITION TO AMEND RULES)	
13 AND 47 OF THE ARIZONA)	Supreme Court No.
RULES OF FAMILY LAW)	R-13-_____
PROCEDURE)	(expedited consideration requested)
_____)	

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions the Court to adopt the attached proposed amendments to Rules 13 and 47 of the Arizona Rules of Family Law Procedure (“ARFLP”). The proposed amendments are designed to mirror the statutory requirements regarding pre-decree temporary orders for legal decision-making or parenting time, as adopted by Senate Bill 1073 (Laws 2013, Chapter 31). The text of the proposed amendments is set out in the accompanying Appendix A.

I. Background and Purpose of the Proposed Rule Amendment. Senate Bill 1073 was passed in the First Regular Session of the Fifty-first Legislature

(2013). The bill amends A.R.S. § 25-407 by codifying a sixty-day timeframe in which to hold an evidentiary hearing for temporary orders in any pre-decree matter regarding legal decision-making and parenting time, in addition to designating three exceptions¹ to the 60-day timeframe requirement. The bill's effective date is September 13, 2013.

II. Contents of the Proposed New Rules. The proposed amendments incorporate the changes to A.R.S. § 25-407 adopted by SB 1073 as follows:

(a) **Committee Comment to Rule 13:** A conforming change is necessary to reference the renumbered paragraph in A.R.S. § 25-407. An additional change updates terminology from “custody” to “legal decision-making” based on last year’s adoption of Senate Bill 1127 (Laws 2012, Chapter 309)², which became effective on January 1, 2013.

(b) **Rule 47(A)(1) and (B):** Pertinent sections of SB 1073 are mirrored in the proposed rule changes to clarify the priority of legal decision-making and parenting time proceedings and to instruct the courts to hold an evidentiary hearing

¹ (1.) The filing party waives the requirement for a hearing to be conducted within sixty days after the party files the motion. (2.) Temporary orders are established through a separate conference or hearing within sixty days after the party files the motion. (3.) Extraordinary circumstances exist and the court is not able to schedule the hearing. If the court is not able to schedule the hearing with sixty days after the motion is filed, it must make a written finding on the record as to the cause of the delay.

² SB 1127 amended A.R.S. 25-403 Legal decision-making; best interests of child. (Laws 2012, Ch. 309, effective January 1, 2013.)

within sixty days after the party files the motion, except as otherwise provided by A.R.S. § 25-407.³

Furthermore, the proposed rule amendment would update terminology based on SB 1127.

II. Pre-Petition Comments. The petition has not been circulated for pre-petition comments.

III. Effective Date of the Proposed Rule Amendment. The adoption of the proposed amended rules is necessary to conform the rules to the revised statute and update terminology. Petitioner respectfully requests that the Court consider this petition and adopt the proposed rule amendments on an expedited basis with a comment period to follow, as permitted by Supreme Court Rule 28(G),

RESPECTFULLY SUBMITTED this 10th day of July, 2013.

By /s/
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³ Rule 47(D) already requires the court to schedule a pretrial conference, a Resolution Management Conference, or an evidentiary hearing, no later than thirty (30) days after receiving the verified motion for temporary orders. Furthermore, Rule 47(D) requires that in the event the court holds a pretrial conference or Resolution Management Conference at which all issues are not resolved, the court shall then set an evidentiary hearing not later than thirty (30) days thereafter to resolve the remaining issues, unless the parties agree to a different timeframe or procedure.

APPENDIX A

(Proposed changes shown with additions identified by underscoring and deletions identified by ~~strike through~~.)

I. GENERAL ADMINISTRATION

Rule 13. Public Access to Proceedings and Records

A. through D. [No changes]

COMMITTEE COMMENT

A.R.S. § 25-407(~~D~~)(E) provides: “If the court finds that to protect the child’s welfare, the record of any interview, report investigation, or testimony in a ~~custody~~ legal decision-making proceeding should be kept secret, the court may then make an appropriate order sealing the record.

VI. TEMPORARY ORDERS

Rule 47. Temporary Orders

A. Motions for Pre-Decree or Pre-Judgment Temporary Orders. A party seeking temporary orders under A.R.S. §§ 25-315, 25-324, 25-404, 25-408, 25-415, 25-817 or 25-905 shall do so by filing a separate verified motion with the court setting forth the legal and jurisdictional basis for the motion and the specific relief requested. The motion shall be filed after or concurrently with the initial petition, shall incorporate the relevant allegations of a filed petition by reference and not separately repeat them, and shall include the following information and documents, where relevant:

1. ~~Custody~~ Legal Decision-Making and Parenting Time. If a party seeks a temporary ~~custody~~ legal decision-making, parenting time, or visitation order, the motion shall set forth a proposed parenting plan specifically stating the ~~custody~~ legal decision-making, parenting time, and visitation requested for all parties to the action. Pursuant to A.R.S. § 25-407, legal decision-making and parenting time proceedings shall receive priority in being set for hearing. If a party to a legal decision-making or parenting time action files a motion for temporary orders in any pre-decree matter, the court shall hold an evidentiary hearing within sixty days after the party files the motion except as otherwise provided by § 25-407. This requirement does not preclude the court from setting any other conference or hearing deemed appropriate.

(2.) through (4.) [No changes.]

B. Motions for Post-Decree or Post-Judgment Temporary ~~Custody~~ Legal Decision-Making Orders. A party seeking a temporary ~~custody~~ legal decision-making, parenting time, or visitation order following a previous ~~custody~~ determination, shall do so by filing a separate verified motion setting forth the legal and jurisdictional basis for the motion and the specific relief requested. The motion shall be filed after or concurrently with a post-decree or post-judgment petition authorized by statute, shall incorporate the relevant allegations of the pending post-decree or post-judgment petition by reference and not separately repeat them, and shall set forth the relief requested, including a proposed parenting plan stating the ~~custody~~ legal decision-making and parenting time requested for all parties to the action. Upon receiving a post-decree or post-judgment motion for temporary ~~custody~~ legal decision-making, parenting time, or visitation orders, the court shall schedule a post-decree or post-judgment management conference, or an evidentiary hearing at an appropriate time determined by the court.

C. through N. [No changes.]